

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

CROWN CORK & SEAL CO. INC.	:	CIVIL ACTION
	:	
Plaintiff	:	
	:	
v.	:	
	:	
COTT CORPORATION	:	
	:	NO. 01-5930
	:	
Defendant	:	
	:	

**M E M O R A N D U M**

Newcomer, S.J. February , 2002

BACKGROUND

Currently before the Court is an Emergency Motion for a Protective Order Sequestering Witnesses. This case stems from a dispute over a June 15, 2000 Supply Agreement between Plaintiff Crown Cork & Seal Company, Inc. ("Crown") and Defendant Cott Corporation ("Cott"). Specifically, Crown alleges that Cott fraudulently induced Crown to sign the agreement. The motion before the Court was brought by Crown who asks the Court to: (1) limit all persons present at depositions to counsel for the parties, the deponent and a court reporter; (2) restrict all witnesses from providing a copy or any part of their deposition transcript to anyone other than his/her outside counsel, or

reviewing any part of the transcript of any other witness's deposition; and (3) restrict counsel from providing deposition transcripts to any witness other than the witnesses whose testimony was recorded in the transcript. Crown justifies such proposed restrictions by stating, "[t]he resolution of the present action will turn in large part on the testimony of fact witnesses...it is essential that the witnesses who are to testify about these matters are not informed of what the other witnesses have said, so that they may give clear and uninfluenced testimony..." Memorandum of Law in Support of Plaintiff's Emergency Motion for a Protective Order Sequestering Witnesses, at 4. In the interests of fairness, Crown has voluntarily agreed to conduct its depositions under the same restrictions should this Court grant its motion.

#### DISCUSSION

It is undisputed that upon a showing of "good cause" this Court has the ability to impose the restrictions Crown has requested. Fed. R. Civ. P 26(c)(5). Therefore, the remainder of this discussion shall focus on whether the possibility of influenced testimony serves as sufficient "good cause" to impose the restrictions Crown has requested.

A review of the relevant case law shows that a majority of Courts facing this question have answered in the negative. Most notable are Visor v. Sprint/United Management Co., 1997 U.S. Dist. Lexis 14086 (D. Colo., August 15, 1997) and United Incentives, Inc. v. Sea Gull Lighting Products, Inc., 1991 U.S. Dist. Lexis 14461 (E.D.Pa., Oct. 7, 1991)(Waldman, J.) where these Courts have held that sequestration orders, such as the one requested here, must be granted only in light of exceptional circumstances. An unsubstantiated threat of influenced testimony, as is the case at hand, does not constitute such an exceptional circumstance. Id. at \*3 ("An inchoate fear of influence upon deposition testimony does not establish good cause.").

While Crown has cited several cases where federal courts have issued sequestration orders in similar circumstances, these cases are unpersuasive. First, they contradict the majority of case law in this area. Second, this Court is not in any way bound to follow these decisions. Further, Crown has failed to set forth any proof whatsoever of possible influence.

More than once in their memorandum of law Crown argues that credibility is particularly at issue in this case. This Court believes Crown would be hard pressed to find any case where credibility is not an issue. While the Court is mindful of the

importance of truthful and unfettered testimony, it also recognizes that a determination of credibility is made during trial by the factfinder. Should Crown feel that a witness has been influenced it has ample opportunity to expose any notions of influence on cross-examination. To impose the proposed restrictions without sufficient proof of possible influence would come at the great cost of altering our system of justice at the whim of a party's slightest suspicion of influence. Such a cost far outweighs the benefits attributed to our judicial system. For these reasons this Court denies plaintiff's motion.

AND IT IS SO ORDERED.

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Clarence C. Newcomer, S.J.

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**O R D E R**

AND NOW, this       day of February, 2002, upon  
consideration of plaintiff's Emergency Motion for a Protective  
Order Sequestering Witnesses and defendant's response, it is  
hereby ORDERED that said motion is DENIED.

AND IT IS SO ORDERED.

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Clarence C. Newcomer, S.J.